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Extracts from the

BUSINESS AND PROFESSIONS CODE

of California

PERTAINING TO

**WEIGHTS AND MEASURES
AND PETROLEUM PRODUCTS**

JANUARY 2006



**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
DIVISION OF MEASUREMENT STANDARDS**

BUSINESS AND PROFESSIONS CODE

DIVISION 5

Weights and Measures

[Added by Stats 1939 ch 43 § 1.]

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GENERAL PROVISIONS

CHAPTER 1

General Provisions

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§ 12014. SEALING OR CONDEMNING BEFORE TESTING AS MISDEMEANOR: EXCEPTION FOR PLANNED PROGRAM OF PROBABILITY SAMPLING

(a) Except as provided in subdivision (b), any sealer who seals any weight, measure, balance or weighing or measuring instrument or apparatus before first testing and making it conform with the standards of the state, or who condemns any weight, measure, balance or weighing or measuring instrument or apparatus without first testing it is guilty of a misdemeanor.

(b) A sealer may engage in a planned program of probability sampling of devices, using methods approved by the director. The sealing of a device by a sealer pursuant to such sampling and testing program is exempt from the provisions of subdivision (a).

Added Stats 1939 ch 43 § 1; Amended Stats 1979 ch 527 § 3.

§ 12015. SEALER TO CAUSE PROSECUTION OF VIOLATOR

Any sealer having knowledge of a violation of any of the provisions of any law relating to weights and measures shall cause the violator to be prosecuted.

Added Stats 1939 ch 43 § 1.

§ 12015.3. CIVIL PENALTY FOR VIOLATION OF PROVISIONS OF DIVISION

(a) The sealer may levy a civil penalty against a person violating any provision of this division or a regulation adopted pursuant to any of these provisions, of not more than one thousand dollars (\$1,000) for each violation. It is a complete defense to a criminal prosecution for a violation of any provision of this division or a regulation adopted pursuant to any provision of this division that the defendant has been assessed and has paid a civil penalty under this section for the same act or acts constituting the violation. Any civil penalty under this section shall be cumulative to civil remedies or penalties imposed under any other law.

(b) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing. The request shall be made within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the sealer's evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the sealer may take the action proposed without a hearing.

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(c) If the person upon whom the sealer levied a civil penalty requested and appeared at a hearing, the person may appeal the sealer's decision to the secretary within 30 days of the date of receiving a copy of the sealer's decision. The following procedures apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, state the grounds for the appeal, and include a copy of the sealer's decision. The appellant shall file a copy of the appeal with the sealer at the same time it is filed with the secretary.

(2) The appellant and the sealer may, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the secretary, present the record of the hearing including written evidence that was submitted at the hearing and a written argument to the secretary stating grounds for affirming, modifying, or reversing the sealer's decision.

(3) The secretary may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement of the appellant, the sealer, and the secretary.

(5) The secretary shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the secretary finds substantial evidence in the record to support the sealer's decision, the secretary shall affirm the decision.

(6) The secretary shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practicable.

(7) On an appeal pursuant to this section, the secretary may affirm the sealer's decision, modify the sealer's decision by reducing or increasing the amount of the penalty levied so that it is within the secretary's guidelines for imposing civil penalties, or reverse the sealer's decision. Any civil penalty increased by the secretary shall not be higher than that proposed in the sealer's notice of proposed action given pursuant to subdivision (b). A copy of the secretary's decision shall be delivered or mailed to the appellant and the sealer.

(8) Any person who does not request a hearing pursuant to subdivision (b) may not file an appeal pursuant to this subdivision.

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(9) Review of a decision of the secretary may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) After the exhaustion of the appeal and review procedures provided in this section, the sealer, or his or her representative, may file a certified copy of a final decision of the sealer that directs the payment of a civil penalty and, if applicable, a copy of any decision of the secretary or his or her authorized representative rendered on an appeal from the sealer's decision and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

(e) If the civil penalty is levied by the State Sealer, the revenues derived therefrom shall be deposited in the Department of Food and Agriculture Fund and, upon appropriation, shall be used by the State Sealer to carry out his or her responsibilities under this division. If the civil penalty is levied by the county sealer, the revenues shall be deposited in the general fund of the county and, upon appropriation by the board of supervisors, shall be used by the county sealer to carry out his or her responsibilities under this division.

(f) This section does not apply to violations involving utility meters, or to violations involving the testing and inspection of utility meters, in mobilehome parks, recreational vehicle parks, or apartment complexes, where the owner of the park or complex owns and is responsible for the utility meters.

(g) Upon the written request of the Attorney General of California, any district attorney, or any city prosecutor or city attorney described in subdivision (a) of Section 17206, the State Sealer or the county sealer within their respective jurisdictions, shall provide all reports and records regarding any actions that occurred within the four months prior to the date of the written request in which civil penalties were levied pursuant to this section or liability for costs incurred are determined pursuant to Section 12015.5.

(h) No investigative costs shall be imposed pursuant to Section 12015.5 for violations for which civil penalties are imposed pursuant to this section.

Added Stats 1994 ch 592 § 2; Amended Stats 1997 ch 476 § 1; Amended Stats 2000, ch 512 § 1; Amended Stats 2005, ch 529 § 1.

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§ 12015.5. LIABILITY FOR INVESTIGATIVE COSTS

Any person convicted of violating any of the provisions of this division, or, except as provided in Section 12015.3, any person who is determined to be civilly liable for violating any of the provisions of this division, shall be liable for reasonable costs incurred in investigating the action.

Added Stats 1994 ch 592 § 3. Amended Stats 2005 ch 529 § 2.

§ 12016. HINDERING OR OBSTRUCTING SEALER OR DEPUTY: MISDEMEANOR

Any person who hinders or obstructs in any way any sealer, in the performance of his official duties, is guilty of a misdemeanor.

Added Stats 1939 ch 43 § 1; Amended Stats 1965 ch 83 § 2.

§ 12017. COMPLIANCE BY CORPORATE OFFICERS, DIRECTORS AND MANAGERS: MISDEMEANOR

All officers, directors and managers of corporations, whose respective corporations use or sell any weights, measures, or weighing or measuring instruments which are subject to inspection shall comply with the provisions of this division on behalf of their respective corporations; and all officers, directors and managers of corporations, whose respective corporations sell any commodity which is subject to inspection shall comply with the provisions of this division on behalf of their respective corporations.

In case any corporation violates any of the provisions of this division, the corporation and the officers thereof directly concerned with the act or acts constituting such violation shall be severally guilty of a misdemeanor.

Added Stats 1939 ch 43 § 1.

§ 12018. NEGLIGENCE OR REFUSAL TO EXHIBIT WEIGHT, ETC., TO SEALER: MISDEMEANOR

Any person neglecting or refusing to exhibit any weight, measure, weighing or measuring instrument, or appliances and accessories connected therewith in his possession or under his control, to any sealer for inspection and examination is guilty of a misdemeanor.

Added Stats 1939 ch 43 § 1.

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(f) Whenever any retail cuts of meat are sold in a variety pack the retailer shall furnish, at the time of sale, an itemization of the total net weight of each of the various retail cuts sold and the total net weight of the entire meat purchase, and a separate itemization shall be furnished for frozen food products other than meat indicating price and weight of each product.

(g) Whenever freezer meat is sold directly to the consumer, the consumer shall be supplied at the time of sale with the weight of the carcass or primal cuts before cutting and a complete and accurate inventory which shall contain the net weight of meat delivered. The consumer shall also be supplied with complete cutting instructions for each cut of meat process and an exact inventory of each such cut. The consumer shall also be furnished with the total weight of ground meat from carcass or primal cuts.

(h) A half of beef shall consist of a forequarter and a hindquarter from the same animal. When beef is sold as a half of beef, the consumer shall be furnished an invoice listing the weight of each such quarter. Not more than 8 percent tolerance differential shall be allowed.

(i) Whenever the consumer buys freezer meats or variety packs, the entire order shall be delivered to the consumer or held and maintained in storage and available for such consumer.

Added Stats 1975 ch 454 § 1.

§ 12024.10. RETENTION OF DOCUMENT STATING WEIGHT AND CUT OF MEAT SOLD

A true and legible copy of each document issued pursuant to Section 12024.7 or 12024.9 shall be retained by the person, company, or corporation issuing the document for a period of one year and shall be made available for inspection by a sealer upon request. This section shall not apply to primal cuts of meat which are smaller than one quarter of a carcass.

Added Stats 1981 ch 758 § 1.

§ 12024.11. REGULATION OF THE SALE OR ADVERTISEMENT OF WOOD FUEL

The director shall adopt necessary rules and regulations pertaining to the sale or advertisement of wood for fuel purposes in order to standardize quantities of measurement and to protect against deceptive marketing practices.

Added Stats 1982 ch 758 § 1.

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§ 12024.12. MAINTAINING RECORDS FOR KOSHER MEAT PURCHASES

Added Stats 1985 ch 452 § 1; Amended Stats 1986 ch 1193 § 1; Amended Stats 1988 ch 990 § 1; Amended Stats 1992 ch 63 § 1; Expired by own terms January 1, 1994.

§ 12025. REFUSAL TO EXHIBIT COMMODITY BEING SOLD AT GIVEN WEIGHT OR QUANTITY: MISDEMEANOR

Any person, who by himself, or his employee or agent, or as proprietor or manager, refuses to exhibit any commodity being sold at a given weight or quantity, or ordinarily so sold, to a sealer for the purpose of allowing the same to be proved as to the quantity thereof is guilty of a misdemeanor.

Added Stats 1939 ch 43 § 1.

§ 12025.5. IDENTIFICATION OF COMMODITY OR CONTAINER ORDERED OFF SALE UNDER §§ 12211 OR 12607

Whenever any commodity or any container is ordered off sale under the provisions of Section 12211 or Section 12607 of this division, the sealer shall cause the commodity or container affected by such off-sale order to be identified by a tag or other suitable device with the words "off sale". It shall be unlawful to remove or obliterate any such tag or device placed upon such commodity or container or in any way dispose of or commingle such commodity or container or prepare, pack, place, deliver for shipment, deliver for sale, sell, or cause to be loaded, shipped, or transported, any such commodity or container before it has been released by the sealer.

Added Stats 1959 ch 1792 § 1; Amended Stats 1967 ch 272 § 2; Stats 1969 ch 1309 § 1.

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§ 12026. VIOLATION OF PROVISIONS: MISDEMEANOR

(a) Except as otherwise specifically provided, any person violating any of the provisions of this division is guilty of a misdemeanor.

(b) It is unlawful for any person to violate any of the rules, regulations, tolerances, specifications, or standards adopted under the provisions of this division.

Added Stats 1939 ch 43 § 1; Amended Stats 1989 ch 818 § 1.

§ 12026.5. REMEDIES AND PENALTIES PROVIDED AS NONEXCLUSIVE

Except as otherwise specifically provided, the remedies or penalties provided by this division are cumulative to each other and to the remedies or penalties available under all other laws of this state.

Added Stats 1979 ch 527 § 5.

§ 12027. RULES AND REGULATIONS AUTHORIZED

The director may make such rules and regulations as are reasonably necessary for the purpose of carrying out the provisions of this division.

Added Stats 1939 ch 43 § 1; Amended Stats 1957 ch 1749 § 28.

§ 12028. ADOPTION OF REGULATIONS

Added Stats 1994 ch 592 § 4; Amended Stats 2004 ch 676 § 8. Repealed Stats 2005 ch 529 § 3.

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§ 12029. LEGISLATIVE ANALYST STUDY OF CIVIL PENALTIES

The Legislative Analyst shall conduct a study of the civil penalties imposed pursuant to Section 12015.3 and report its findings to the Legislature and the Governor by January 1, 2000. The report shall include all of the following:

- (a) An analysis of whether civil penalties are effective as an alternative enforcement mechanism for violations of weights and measures laws and regulations.
- (b) A review of how the department and the counties use the revenue brought in from the civil penalties.
- (c) A recommendation on whether civil penalties are a feasible alternative to criminal prosecution and criminal penalties.

Added Stats 1997 ch 476 § 2.

ADMINISTRATION

ARTICLE 2.1

Fees and Charges

(Operative until January 1, 2011)

- § 12240. Annual device registration fee
- § 12241. [Repealed]
- § 12242. Disposition of revenue
- § 12243. Public meeting prior to adoption of ordinance: Notice: Estimated cost
- § 12244. Recovery of costs incurred in conducting meeting
- § 12245. [Repealed]
- § 12246. Repeal date

§ 12240. ANNUAL DEVICE REGISTRATION FEE

(a) Except as otherwise provided in this section, the board of supervisors, by ordinance, may charge an annual registration fee, not to exceed the county's total cost of actually inspecting or testing the devices as required by law, to recover the costs of inspecting or testing weighing and measuring devices required of the county sealer pursuant to Section 12210, and to recover the cost of carrying out Section 12211.

(b) Except as otherwise provided in this section, the annual registration fee shall not exceed the amount set forth in subdivisions (f) to (n), inclusive.

(c) The county may collect the fees biennially, in which case they shall not exceed twice the amount of an annual registration fee. The ordinance shall be adopted pursuant to Article 7 (commencing with Section 25120) of Chapter 1 of Part 2 of Division 2 of Title 2 of the Government Code.

(d) Retail gasoline pump meters, for which the above fees are assessed, shall be inspected as frequently as required by regulation, but not less than once every two years.

(e) Livestock scales, animal scales and scales used primarily for weighing feed and seed, for which the above fees are assessed, shall be inspected as frequently as required by regulation.

(f) For purposes of this section, the annual registration fee for a business that uses a commercial weighing or measuring device or devices shall consist of a business location fee, and a device fee, as specified in subdivisions (g) to (n), inclusive. The business location fee and device fee shall not exceed the following:

- (1) Beginning January 1, 2006, sixty dollars (\$60) per business location, plus 60 percent of the maximum applicable device fee listed in subdivisions (h) to (n), inclusive.

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(2) Beginning January 1, 2007, eighty dollars (\$80) per business location, plus 80 percent of the maximum applicable device fee listed in subdivisions (h) to (n), inclusive.

(3) Beginning January 1, 2008, and thereafter, one hundred dollars (\$100) per business location, plus 100 percent of the maximum applicable device fee listed in subdivisions (h) to (n), inclusive.

(g) For marinas, mobilehome parks, recreational vehicle parks, and apartment complexes, where the owner of the marina, park, or complex owns and is responsible for the utility meters, the device fee shall not exceed two dollars (\$2) per device per space or apartment. Marinas, mobilehome parks, recreational vehicle parks, and apartment complexes for which the above fees are assessed shall be inspected and tested as frequently as required by regulation.

(h) For weighing devices, other than livestock, with capacities of 10,000 pounds or greater, the device fee shall not exceed two hundred fifty dollars (\$250) per device; for weighing devices, other than livestock scales, with capacities of at least 2,000 pounds but less than 10,000 pounds, the device fee shall not exceed one hundred fifty dollars (\$150) per device.

(i) This section does not apply to farm milk tanks.

(j) A scale or device used in a certified farmers' market, as defined by Section 113745 of the Health and Safety Code, is not required to be registered in the county where the market is conducted, if the scale or device has an unexpired seal for the current year, issued by a licensed California county sealer.

(k) For livestock scales with capacities of 10,000 pounds or greater, the device fee shall not exceed one hundred fifty dollars (\$150) per device; for livestock scales with capacities of at least 2,000 pounds but less than 10,000 pounds, the device fee shall not exceed one hundred dollars (\$100) per device.

(l) For liquified petroleum gas (LPG) meters, truck mounted or stationary, the device fee shall not exceed one hundred seventy-five dollars (\$175) per device.

(m) For wholesale and vehicle meters, the device fee shall not exceed twenty-five dollars (\$25) per device.

(n) For all other commercial weighing or measuring devices not listed in subdivisions (g) to (m), inclusive, the device fee shall not exceed twenty dollars (\$20) per device. For the purposes of this subdivision, the total annual registration fee shall not exceed the sum of one thousand dollars (\$1,000), for each business location.

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(o) For the purposes of this section, a single business location is defined as:

- (1) Each vehicle containing one or more commercial devices.
- (2) Each business location that uses different categories or types of commercial devices that require the use of specialized testing equipment and that necessitates not more than one inspection trip by a weights and measures official.

Added Stats 1982 ch 1380 § 4; Amended Stats 1983 ch 1245 § 3; Amended Stats 1987 ch 779 § 1; Amended Stats 1991 ch 360 § 1; Amended Stats 1992 ch 1203 § 1; Amended Stats 1993 ch 1050 § 1; Amended Stats 1994 ch 592 § 5; Amended Stats 1998 ch 205 § 1; Amended Stats 2005 ch 529 § 4.

§ 12241. CLASSIFICATION OF WEIGHING AND MEASURING DEVICES

Added Stats 1982 ch 1380 § 4; Amended Stats 1983 ch 1245 § 4; Repealed Stats 1987 ch 779 2 § 2.

§ 12242. DISPOSITION OF REVENUE

The revenue from any fee charged pursuant to Section 12240 shall be deposited in the general fund of the county and used solely for the activities required by Sections 12210 and 12211.

Added Stats 1982 ch 1380 § 4; Amended Stats 1983 ch 1245 § 5; Amended Stats 1993 ch 1050 § 2.

§ 12243. PUBLIC MEETING PRIOR TO ADOPTION OF ORDINANCE: NOTICE: ESTIMATED COST

In addition to providing notice as otherwise required, before adopting an ordinance charging fees pursuant to Section 12240, the board of supervisors shall hold at least one public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the information required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the board of supervisors. Any written request for the mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for the mailed notices shall be filed on or before April 1 of each year. The board of supervisors may establish a reasonable annual charge for sending the notices based on the estimated cost of providing that service. At least 10 days prior to the meeting, the board of supervisors shall make available to the

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public information indicating the amount of cost, or estimated cost, required to provide the service for which the fee is charged and the revenue sources anticipated to provide the service, including General Fund revenues. If the fees create revenues in excess of actual cost, those revenues shall be used to reduce the fee creating the excess.

Added Stats 1982 ch 1380 § 4; Amended Stats 1983 ch 1245 § 6.

§ 12244. RECOVERY OF COSTS INCURRED IN CONDUCTING MEETING

Any costs incurred by the board of supervisors in conducting the required meeting may be recovered from fees charged for the services which were the subject of the meeting.

Added Stats 1982 ch 1380 § 4.

§ 12245. REVIEW OF STATEWIDE EFFECTS OF ORDINANCES: REPORT TO LEGISLATURE

Added Stats 1982 ch 1380 § 4; Repealed Stats 1987 ch 779 § 3.

§ 12246. REPEAL DATE

This article shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2011, deletes or extends that date.

Added Stats 1982 ch 1380 § 4; Amended Stats 1985 ch 74 § 1; Amended Stats 1987 ch 779 § 4; Amended Stats 1988 ch 922 § 2; Amended Stats 1992 ch 430 and ch 1203 § 2; Amended Stats 1995 ch 47 § 1; Amended Stats 1997 ch 476 § 3; Amended Stats 2000 ch 512, § 2; Amended Stats 2005 ch 529 § 5.

AUTOMATIC CHECKOUT SYSTEMS

CHAPTER 13.5

Point-Of-Sale System Price Accuracy Verification Methodologies

[Added by Stats 2005 ch 529 § 6.]

§ 13350. Initial Standard Inspection Procedure: Inspection Fees

§ 13351. "Random Sample"

§ 13352. "Point-Of-Sale System"

§ 13353. "Sale Items"

§ 13354. "Area"

§ 13355. "Initial Standard Inspection"

§ 13356. "Special Inspections"

§ 13357. Repeal Date

§ 13350. INITIAL STANDARD INSPECTION PROCEDURE: INSPECTION FEES

(a) The board of supervisors of any county or city and county that has adopted or that adopts an ordinance for the purposes of determining the pricing accuracy of a retail establishment using a point-of-sale (POS) system, shall base the initial standard inspection of the POS system on the following criteria:

(1) The initial standard inspection shall be performed by collecting a random sample of items that shall include a maximum of 50 percent sale items from either:

- (i) One department of a retail store.
- (ii) Multiple areas of a retail store.
- (iii) The entire store.

(2) The initial standard inspection shall be performed by testing a minimum random sample of 25 items for a retail establishment with three or fewer POS checkout registers.

(3) The initial standard inspection shall be performed by testing a minimum random sample of 50 items for all other retail establishments.

(4) The sealer shall verify that the lowest advertised, posted, marked, displayed, or quoted price is the same as the price displayed or computed by the point-of-sale equipment or printed receipt. Only items computed at a higher price than the lowest advertised, posted, marked, displayed, or quoted price shall be considered not in compliance.

(5) The compliance rate percentage of a retail establishment shall be determined by dividing the number of items in compliance by the sample size multiplied by 100.

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- (b) Enforcement action may be taken for any item not in compliance.
- (c) The sealer may reinspect any retail facility that has a compliance rate of less than 98 percent.
- (d) The board of supervisors, by ordinance, may charge a point-of-sale system inspection fee or an annual registration fee, not to exceed the county's total cost of inspecting or testing the accuracy of prices accessed or generated by the system pursuant to this section.
- (e) The board of supervisors, by ordinance, may charge a reinspection fee for reinspections of a retail establishment that fails a standard inspection, not to exceed the county's total cost of reinspecting or testing the accuracy of prices accessed or generated by the system pursuant to this section.

Added Stats 2005 ch 529 § 6.

§ 13351. “RANDOM SAMPLE”

For purposes of this chapter, "random sample" of items means that the selection process shall be modeled after the National Institute of Standards and Technology Handbook 130, 2005 Edition (HB 130) - Examination Procedures for Price Verification, randomized sample collection; stratified sample collection.

Added Stats 2005 ch 529 § 6.

§ 13352. “POINT-OF-SALE SYSTEM”

For purposes of this chapter, "point-of-sale" system means any system used by a retail establishment such as, but not limited to, Universal Product Code (UPC) scanners, price look-up codes, or an electronic price look-up system as a means for determining the price of the item being purchased by a consumer.

Added Stats 2005 ch 529 § 6.

§ 13353. “SALE ITEMS”

For the purposes of this chapter, "sale items" include any item that is represented or advertised to be lower in price from that which the item is normally offered for sale. A "sale item" includes but is not limited to, an item that is represented as "promotional," "limited time offer," a "manager special," "discount taken at register," or displayed with any other advertisements that offers or suggests a reduced price.

Added Stats 2005 ch 529 § 6.

AUTOMATIC CHECKOUT SYSTEMS

§ 13354. "AREA"

For purposes of this chapter, "area" means an "entire store," a "department," "grouping of shelves or displays." or other "section" of a store as defined by the sealer from which samples are selected for verification. "Nonpublic" areas of a store, such as the area in a pharmacy in which controlled drugs are kept or product storage rooms, shall not be included.

Added Stats 2005 ch 529 § 6.

§ 13355. "INITIAL STANDARD INSPECTION"

For the purposes of this chapter, "initial standard inspection" means an inspection made at the customary time interval used by an enforcement agency.

Added Stats 2005 ch 529 § 6.

§ 13356. "SPECIAL INSPECTIONS"

All other inspections of the point-of-sale system are considered "special inspections," including, but not limited to, inspections pertaining to investigations, consumer complaints, complaints from competing businesses or a reinspection of a retail establishment at which one or more price accuracy violations have occurred within the previous three months.

Added Stats 2005 ch 529 § 6.

§ 13357. REPEAL DATE

This chapter shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2009, deletes or extends that date.

Added Stats 2005 ch 529 § 6.

WEIGHTS AND MEASURES

PETROLEUM

CHAPTER 14

Petroleum

**(Added by Stats 1980 ch 636 § 5.)
Formerly Chapter 7 of Division 8
(Repealed Stats 1980 ch 636.)
(Added by Stats 1963 ch 2005 § 2.)**

Articles

- 1. General Provisions. §§ 13400-13405**
- 2. Sale of Petroleum Products. §§ 13410-13413**
- 3. Hours of Business. §§ 13420-13422**
- 4. Motor Oil Fee. §§ 13430-13434**
- 5. Standards for Gasoline. §§ 13440-13443**
- 5.5. Standards for Hydrogen. § 13446**
- 6. Standards for Compression-Ignition Engine Fuel, Diesel Fuel, Kerosene and Fuel Oils. §§ 13450-13451**
- 7. Standards for Lubricating Oils and Oils Used to Lubricate Transmissions, Gears or Axles. §§ 13460-13462**
- 8. Price Indications on Petroleum Dispensing Apparatus. §§ 13470-13477**
- 9. Labeling. §§ 13480-13490**
- 10. Tank Vehicles. §§ 13500-13503**
- 11. Basis of Settlement. § 13520**
- 12. Price Sign Advertising. §§ 13530-13540**
- 13. Inducements for the Sale of Gasoline or Motor Fuel. § 13550**
- 14. Passing Off. §§ 13560-13571**
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- 16. Enforcement. §§ 13590-13600**
- 17. Penalties. §§ 13610-13611**
- 18. Disposition and Use of Moneys. § 13620**

ARTICLE 1

General Provisions

- § 13400. “Advertising medium”**
§ 13401. Definitions of terms
§ 13402. “Standard test”
§ 13403. “Octane number” or “antiknock index number”
§ 13404. “Sale of Compressed Natural Gas as a Motor Vehicle Fuel”
§ 13405. Developmental Engine Fuels

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§ 13400. “ADVERTISING MEDIUM”

“Advertising medium”, as used in this chapter, includes banner, sign, placard, poster, streamer and card.

Added Stats 1963 ch 2005 § 2; Renumbered Stats 1980 ch 636.

§ 13401. DEFINITIONS OF TERMS

(a) “Sell” or any of its variants means attempt to sell, offer for sale or assist in the sale of, permit to be sold or offered for sale or delivery, offer for delivery, trade, barter, or expose for sale.

(b) “Manufacturer” means manufacturer, refiner, producer, or importer.

(c) “Petroleum products” means gasoline, diesel fuel, liquefied petroleum gas only when used as a motor fuel, kerosene, thinner, solvent, liquefied natural gas, pressure appliance fuel, or white gasoline, or any motor fuel, or any oil represented as engine lubricant, engine oil, lubricating or motor oil, or any oil used to lubricate transmissions, gears, or axles.

(d) “Barrel,” when applied to petroleum products, consists of 42 gallons.

(e) “Oil” means motor oil, engine lubricant, engine oil, lubricating oil, or oils used to lubricate transmissions, gears, or axles.

(f) “Motor oil” means engine oil, engine lubricant, or lubricating oil.

(g) “Gasoline” means a volatile mixture of liquid hydrocarbons, generally containing small amounts of additives, suitable for use as a fuel in spark-ignition internal combustion engines.

(h) “Engine fuel” means any liquid or gaseous matter used for the generation of power in an internal combustion engine or fuel cell. “Motor fuel” means “engine fuel” when that term is used in this chapter.

(i) “Motor vehicle fuel” means any product intended for consumption in an internal combustion engine or fuel cell to produce the power to self-propel a vehicle designed for transporting persons or property on a public street or highway.

(j) “Diesel fuel” means any petroleum product offered for sale which meets the standards prescribed for diesel fuel by this chapter.

(k) “Kerosene” means any petroleum product offered for sale which meets the standards prescribed for kerosene by this chapter.

(l) “Fuel oil” means any petroleum product offered for sale which meets the standards prescribed for fuel oil by this chapter.

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(m) “Automotive spark-ignition engine fuel” means any product used for the generation of power in a spark-ignition internal combustion engine.

(n) “Compression-ignition engine fuel” means any product used for the generation of power in a compression-ignition internal combustion engine.

(o) “Gasoline-oxygenate blend” means a fuel consisting primarily of gasoline along with a substantial amount of one or more oxygenates. For purposes of this section, “substantial amount” means more than 0.35 mass percent oxygen or, if methanol is the only oxygenate, more than 0.15 mass percent oxygen.

(p) “Oxygenate” means an oxygen-containing, ashless, organic compound such as an alcohol or ether, which can be used as a fuel or fuel supplement.

(q) “Developmental engine fuel” means any experimental automotive spark-ignition engine fuel or compression-ignition fuel which does not meet current standards established by this chapter but has characteristics which may lead to an improved fuel standard or the development of an alternative fuel standard.

(r) “Hydrogen” means a fuel composed of the chemical hydrogen intended for consumption in an internal combustion engine or fuel cell.

Added Stats 1963 ch 2005 § 2; Amended Stats 1968 ch 1072 § 1; Stats 1970 ch 140 § 1; Stats 1975 ch 547 § 1; Amended Stats 1978 ch 753; Renumbered Stats 1980 ch 636; Amended Stats 1985 ch 167 § 1; Amended Stats 1993 ch 740 § 1; Amended Stats 1994 ch 521 § 1; Amended Stats 2001 ch 596 § 1; Amended Stats 2005 ch 91 § 2.

§ 13402. “STANDARD TEST”

“Standard test”, as used in this chapter, means test conducted in accordance with the latest published standard adopted by the American Society for Testing and Materials.

Added Stats 1963 ch 2005 § 2; Renumbered Stats 1980 ch 636.

§ 13403. “OCTANE NUMBER” OR “ANTIKNOCK INDEX NUMBER”

“Octane number” or “antiknock index number”, when used in this chapter, means that number assigned to a spark-ignition engine fuel which designates the antiknock quality. The “octane number” or “antiknock index number” shall be determined according to the American Society for Testing and Materials method or methods designated in the latest American Society for Testing and Materials (ASTM) Standard Specification D-4814.

Added Stats 1963 ch 2005 § 2; Amended Stats 1975 ch 547 § 2; Renumbered Stats 1980 ch 636; Amended Stats 1989 ch 1047 § 2.

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§ 13404. “SALE OF COMPRESSED NATURAL GAS AS A MOTOR VEHICLE FUEL”

The sale of compressed natural gas by persons who sell compressed natural gas at retail to the public for use only as a motor vehicle fuel, and who are exempted from public utility status by subdivision (f) of Section 216 of the Public Utilities Code, is a sale of a motor fuel for the purposes of this chapter.

Added Stats 1991 ch 514 § 1

§ 13405. DEVELOPMENTAL ENGINE FUELS

The Department of Food and Agriculture may grant a variance from the specifications of this chapter for developmental engine fuels if all of the following conditions apply:

- (a) Variances may only be granted to provide for the development of information under controlled test conditions to assist in the creation of chemical and performance standards for engine fuels.
- (b) Developmental engine fuel shall only be distributed or sold to fleet-type centrally fueled vehicle and equipment users.
- (c) The applicant shall warn all parties in writing of any potential risk associated with the use of the developmental engine fuel.
- (d) The applicant shall report information when and as the department may prescribe in order for the department to monitor the progress of the developmental engine fuel technology evaluation.

The applicant for a variance shall comply with all other requirements, terms, and conditions that are contained in regulations adopted by the department to further the purposes and administration of this section.

In granting a variance, the department expresses no opinion as to whether an applicant's developmental engine fuel will perform as represented by the applicant. Nor does the department express any opinion to the extent, if at all, that the developmental engine fuel may be safely and effectively used as a substitute for other spark-ignition or compression-ignition engine fuels without incident. Damages caused by the sale, delivery, storage, handling, and usage of the developmental engine fuel shall be addressed in accordance with contractual provisions negotiated and agreed upon by the applicant and the user.

The department may withdraw a variance if the applicant does not adhere to the conditions required to obtain the variance or if the department recognizes a high probability of equipment harm with the continued use of the developmental engine fuel or to protect public safety.

Added Stats 2001 ch 596 § 2.

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ARTICLE 5.5

Standards for Hydrogen

[Added by Stats 2005 ch 91 § 3.]

§13446. STANDARDS ADOPTION

On or before January 1, 2008, the department, with the concurrence of the State Air Resources Board, shall establish specifications for hydrogen fuels for use in internal combustion engines and fuel cells in motor vehicles until a standards development organization accredited by the American National Standards Institute (ANSI) formally adopts standards for hydrogen fuels for use in internal combustion engines and fuel cells in motor vehicles. The department shall then adopt by reference the latest standards established by the ANSI-accredited standards development organization for hydrogen fuel for use in internal combustion engines and fuel cells in motor vehicles, except that no specification or standard shall be less stringent than is required by state law.

Added Stats 2005 ch 91 § 3.

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(4) For purposes of this subdivision, the motor fuel shall be sold in the same unit of measure (e.g., gallons or liters) in which the discount and the price from which the discount is taken are advertised.

(c) In the event that the same grade of motor fuel is sold at different prices from any single place of business, it is unlawful for any person to display any advertising medium which advertises a price of a grade of motor fuel unless the advertising medium advertises in numerals of equal size each of the higher prices, including all taxes, for which the grade is sold or offered for sale, and unless the advertising medium explains the conditions, and any limitations, under which that grade is sold or offered for sale at different prices. The words of explanation shall be clearly shown in letters at least one-third the size of the numerals indicating the prices. The different prices at which the same grade of motor fuel is sold or offered for sale shall be advertised in the same unit of measure (either price per gallon or price per liter) as permitted or required by law.

(d) Nothing in this section prohibits any person who has posted or displayed a sign or advertising medium in compliance with this chapter from displaying additional signs or advertising media which state either (1) the amount of discount in cents per gallon or liter, or (2) the price of one or more brands or grades of motor fuel sold or offered for sale, provided the conditions and any limitations of the discount or price of the brand or grade of motor fuel are included in the additional advertising media in letters not less than one-third the size of the numerals indicating the discount or price.

Added Stats 1984 ch 698; Amended Stats 1985 ch 345 § 5; Amended Stats 1988 ch 590 § 8.

§ 13533. MOTOR OIL: CONTENTS OF DISPLAY

It shall be unlawful for any person to display on or near the premises of any place of business in this state any advertising medium which advertises the price of motor oil offered for sale without conspicuously showing on the same advertising medium the brand of the motor oil and the name of the product. The letters, figures and numerals used to designate the brand and the name of the product shall not be less than one-half the size of the numerals designating the price.

Added Stats 1984 ch 698.

§ 13534. ADDITIONAL ADVERTISING MATTER

(a) Except as provided by subdivision (b), and subdivisions (b), (c), and (d) of Section 13532, it is unlawful for any person to place any additional advertising matter on any advertising medium referred to in this article except:

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- (1) A description of the products offered for sale in letters or numerals not larger than the price numerals.
 - (2) Methods of sale, such as self-serve or full-serve, in letters not less than one-third the size of the price numerals.
 - (3) Words describing the type of services offered at the place of business, such as food market, car wash, tune-up, and the registered trademark or trade name of the service, but not the price of the service.
- (b) Subdivision (a) does not apply to electronic changeable message centers when the advertising content includes both the product offered for sale and its price in a single advertising message, or when the product and price components of the advertising message clearly relate to one another and the price neither starts nor ends the message.

Added Stats 1984 ch 698; Amended Stats 1985 ch 345 § 6; Repealed and Added Stats 1988 ch 590 §§ 9 and 10; Amended Stats 2004 ch 72 § 1.

§ 13535. MOTOR FUEL OR MOTOR OIL WITH NO BRAND DESIGNATION

If any motor fuel or motor oil is advertised for sale, but not under any brand designation, the words “no brand” shall be used on the advertising medium as a brand designation.

Added Stats 1984 ch 698.

§ 13536. LEGIBILITY

All letters, words, figures, or numerals which are part of the advertising media referred to in this article shall have a heavy type face or stroke, shall be clearly visible, and of a color or tint that will contrast the letters, words, figures, or numerals with the background of the advertising media. The height of the letters, figures, and numerals, except the letter “1” and numeral one, shall not be more than twice the width.

Added Stats 1984 ch 698.

§ 13537. PLACEMENT OF ADVERTISING MEDIA

Added Stats 1984 ch 698; Repealed Stats 1986 ch 201.

§ 13538. ADVERTISING OF OTHER GOODS

Added Stats 1984 ch 698; Repealed Stats 1986 ch 201.

AUTOMOTIVE PRODUCTS

ARTICLE 2.

Specifications and Labeling

§ 13710.	Minimum specifications
§ 13710.5.	Expired
§ 13711.	Mislabeled
§ 13712.	Brake fluid receptacles exempt from container labeling requirements
§ 13713.	Adulterated products

§ 13710. MINIMUM SPECIFICATIONS

- (a) (1) The department shall establish specifications for engine coolants and antifreeze, and prediluted engine coolants and prediluted antifreeze that promote the public safety in the operation of motor vehicles.
- (2) In addition to paragraph (1), if the American Society for Testing and Materials adopts standards for recycled engine coolants and antifreeze, the department, on or before January 1, 2002, shall establish specifications for recycled engine coolants and antifreeze, and recycled prediluted engine coolants and antifreeze that promote the public safety in the operation of motor vehicles.
- (3) The chemical, physical, and performance specifications for engine coolants and antifreeze and prediluted engine coolants and prediluted antifreeze under paragraphs (1) and (2) shall not fall below the minimum specifications, if any, established by the American Society for Testing and Materials. Engine coolant and antifreeze shall not contain, after dilution with 30 percent water and subsequent mixing, visually identifiable suspended matter or sediment. Prediluted engine coolant and prediluted antifreeze shall not contain, after mixing, visually identifiable suspended matter or sediment.
- (4) For purposes of this subdivision, the department shall adopt testing procedures and shall specify a virgin reference coolant that it finds is recognized as standard in the industry.

Alcohol-based coolants and antifreeze, excluding glycols, are not suitable for use in automotive engines and shall not be sold or distributed for automotive use.

- (b) Any automatic transmission fluid sold without limitation as to type of transmission for which it is intended, shall meet all automotive manufacturers' recommended requirements for transmissions in general use in the state. Automatic transmission fluids that are intended for use only in certain transmissions, as disclosed on the label of its container, shall meet the latest automotive manufacturers' recommended requirements for those transmissions.

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(c) The department shall establish specifications for brake fluid that promote the public safety in the operation of automotive vehicles. The specifications for brake fluid shall not fall below the minimum specifications established by the National Highway Traffic Safety Administration of the United States Department of Transportation.

(d) Any manufacturer or packager of any product regulated by this chapter and sold in the state shall provide, upon request to duly authorized representatives of the department, documentation of any claim made upon their products' label.

Added Stats 1984 ch 698; Amended Stats 1986 ch 201 § 14; Amended Stats 1992 ch 322 § 11; Amended Stats 1999 ch 494 § 2.

§ 13710.5. VARIANCE FROM ENGINE/ANTIFREEZE STANDARDS FOR RECYCLED PRODUCTS

Added Stats 1997 ch 634 § 1; Amended Stats 1999 ch 494 § 3; Expired by own terms January 1, 2003.

§ 13711. MISLABELING

(a) An engine coolant or antifreeze is mislabeled if any of the following occurs:

(1) The container does not bear a label on which is printed the brand name, principal ingredient, intended application of the coolant or antifreeze, name and place of business of the manufacturer, packer, seller, or distributor, and an accurate statement of the quantity of the contents in terms of liquid measure.

(2) The container does not bear a chart on the label showing appropriate amounts of engine coolant or antifreeze and water in terms of liquid measure to be used to provide protection from freezing at temperatures to at least 30 degrees below zero Fahrenheit.

(3) The container does not bear a statement on the label showing the boiling point of a 50 percent by volume mixture of engine coolant or antifreeze and water in degrees Fahrenheit.

(4) The container is one quart or less and does not bear a label on which is printed the words "engine coolant" or "antifreeze" in letters at least 1/8 inch high on the principal display panel. The container is greater than one quart and does not bear a label on which is printed the words "engine coolant" or "antifreeze" in letters at least 1/4 inch high on the principal display panel.

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(5) The principal ingredient is propylene glycol and the container does not bear a statement on the label not to use an ethylene glycol hydrometer concentration tester for propylene glycol coolants.

(6) The container and carton do not bear a lot or batch number on the label identifying the container lot and date of packaging.

(b) A prediluted engine coolant or prediluted antifreeze is mislabeled if any of the following occurs:

(1) The container does not bear a label on which is printed the brand name, principal ingredient, intended application of the coolant or antifreeze, name and place of business of the manufacturer, packer, seller, or distributor, and an accurate statement of the quantity of the contents in terms of liquid measure.

(2) The container does not bear a statement on the label showing the protection from freezing in degrees Fahrenheit.

(3) The container does not bear a statement on the label showing the boiling point in degrees Fahrenheit.

(4) The container is one quart or less and does not bear a label on which is printed the words "prediluted engine coolant" or "prediluted antifreeze" in letters at least 1/8 inch high on the principal display panel. The container is greater than one quart and does not bear a label on which is printed the words "prediluted engine coolant" or "prediluted antifreeze" in letters at least 1/4 inch high on the principal display panel.

(5) The container is one quart or less and does not bear a label on which is printed the words "DO NOT ADD WATER" in letters at least 1/8 inch high. The container is greater than one quart and does not bear a label on which is printed the words "DO NOT ADD WATER" in letters at least 1/4 inch high.

(6) The principal ingredient is propylene glycol and the container does not bear a statement on the label not to use an ethylene glycol hydrometer concentration tester for propylene glycol coolants.

(7) The container and carton do not bear a lot or batch number on the label identifying the container lot and date of packaging.

(c) Automatic transmission fluid shall be deemed to be mislabeled if any of the following occurs:

(1) The container does not bear a label on which is printed the brand name, the name and place of business of the manufacturer, packer, seller, or distributor, the words "Automatic Transmission Fluid", and the duty type classification.

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- (2) The container does not bear a label on which is printed an accurate statement of the quantity of the contents in terms of liquid measure.
- (3) The labeling on the container is false or misleading.
- (d) Brake fluid is mislabeled if any of the following occurs:
 - (1) The container does not bear a label which conforms to the requirements of the National Highway Traffic Safety Administration, United States Department of Transportation, and upon which is printed the brand name.
 - (2) The container does not bear an accurate statement on the label of the quantity of the contents in terms of liquid measure.
 - (3) The labeling on the container is false or misleading.

Added Stats 1984 ch 698; Amended Stats 1992 ch 322 § 12.

§ 13712. BRAKE FLUID RECEPTACLES EXEMPT FROM CONTAINER LABELING REQUIREMENTS

A brake fluid receptacle or dispensing device, including “bleeders”, pressurized containers, or any container used to fill a brake system or to expel air from the system after servicing, are exempt from the container labeling requirements in this chapter except for designation of the contents as “DOT _____ Motor Vehicle Brake Fluid” with the appropriate identification number filled in. The smallest letter and numeral shall not be less than one-eighth inch in height.

Added Stats 1984 ch 698.

§ 13713. ADULTERATED PRODUCTS

Any product referred to in this chapter is adulterated if its characteristics fall below the specifications for that product established by the department as minimum standards.

Added Stats 1992 ch 322 § 8.